



ORDINANCE 487 REVISED

AN ORDINANCE AMENDING CHAPTER 900 OF THE TOWN OF ELSMERE CONCERNING THE PROCEDURES FOR MUNICIPAL ELECTIONS.

Sponsored by: The Mayor and Council

First Reading:

November 11, 2010 Council Meeting:

Results: Passed 7- In Favor, 0 - Opposed

Third and Final Reading with Public Comment

December 09, 2010 Council Meeting:

**Results: Passed 6 – In Favor, 0 – Opposed, with 1 – Absent (4th District
Councilman McKewen)**

ORDINANCE 487 REVISED

AN ORDINANCE AMENDING CHAPTER 900 OF THE TOWN OF ELSMERE CONCERNING THE PROCEDURES FOR MUNICIPAL ELECTIONS.

WHEREAS, the Town of Elsmere seeks to comply with legislation codified in Subchapters IV and V of Chapter 75 of Title 15 of the Delaware Code, governing the conduct of municipal elections; and

WHEREAS, the General Assembly has amended the Charter of the Town of Elsmere in order to allow the Mayor and Council to set many of the procedures governing Municipal Elections within the Town by Ordinance.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ELSMERE AS FOLLOWS:

Section 900 of the Code of the Town of Elsmere is hereby deleted in its entirety and the following amended Section 900 is to be inserted in its place:

CHAPTER 900: ELECTIONS

900. General provisions.

(a) The Town of Elsmere shall conduct all elections for local office using voting machines that the Department of Elections shall provide.

(b) Where a deadline in this Chapter is a Saturday, Sunday, or a holiday in the Town of Elsmere, the deadline shall be the next day that is not a Saturday, Sunday, or holiday in the Town of Elsmere.

(c) Deadlines shall be no earlier than 4:30 p.m. local time.

(d) The term “Department of Elections” as used in this Chapter refers to the Department of Elections for New Castle County.

901. Purpose

This Chapter enables the Town of Elsmere to comply with legislation codified in Subchapters IV and V of Chapter 75 of Title 15 of the Delaware Code, governing the conduct of municipal elections.

902. Board of elections.

(a) A Board of Elections, consisting of 3 members, shall be appointed by the Mayor and confirmed by the Council. The Board of Elections shall oversee the election of the Town of Elsmere's government.

(b) Each member of the Town of Elsmere Board of Elections shall be a qualified elector in the Town of Elsmere and shall not be an elected official or candidate or an immediate family member of an elected official or candidate (mother, father, son, daughter, brother, sister, including half-brothers and sisters, stepfamily members and in-laws).

(c) Members of the Town of Elsmere Board of Elections shall serve 2 year terms.

(d) Upon confirmation of a member to the Town of Elsmere's Board of Elections, the Town of Elsmere shall issue a Certificate of Appointment to the member, and the member shall swear or affirm the following oath orally and in writing:

I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties as a member of the Board of Elections for the Town of Elsmere by ensuring that elections within the Town of Elsmere are conducted fairly, impartially, and in accordance with the Delaware Code and Town of Elsmere charter and ordinances to the best of my ability.

(e) A Town of Elsmere Board of Elections member shall not participate in electioneering. Electioneering includes political discussion of issues, candidates, or partisan topics; the wearing of any button, banner, or other object referring to issues, candidates, or partisan topics; the display, distribution, or other handling of literature or any writing or drawing referring to issues, candidates, or partisan topics; and the deliberate projection of sound referring to issues, candidates, or partisan topics from loudspeakers or otherwise. A Town of Elsmere Board of Elections member who violates this section shall be fined not more than \$500 and shall forfeit that Board of Election member's position on the Board.

(f) The Town of Elsmere Board of Elections shall oversee the absentee ballot process for elections conducted in accordance with this Chapter.

(g) The Town of Elsmere shall post the names and contact information for its Board of Elections in the Town Hall and on the Town of Elsmere's website (www.elsmere.delaware.gov).

(h) The Town of Elsmere shall notify the State Election Commissioner and the Department of Elections of the members of its Board of Elections when such members are installed.

903. Notices; posting; publishing; deadlines, election calendar.

(a) For all Town elections, the Town of Elsmere shall post a Notice of Election conspicuously within the Town no later than 20 days prior to the date of the election. Such notice shall include the date, time, and location of the election; the candidates for each office on the ballot; and the qualifications to vote in the election.

(b) For all Town elections, the Town of Elsmere shall post a Notice of Solicitation of Candidates conspicuously within the Town 20 days prior to the filing deadline for the offices up for election. Such notice shall include the term, or terms, of each office up for election, the deadline and procedure for declaring candidacy for an office up for election, and the qualifications for holding each office.

(c) All notices required by this section shall include information about how to obtain an absentee ballot.

(d) The Town shall post the notices required by this section, at minimum, in compliance with the Delaware Freedom of Information Act, Chapter 100 of Title 29.

(e) The Town shall post all election notices on its website.

(f) The Town shall provide a copy of each election notice to the Department of Elections.

904. Elective offices and candidacy requirements.

904.1. Elective Offices.

The government of the Town and the exercising of all powers conferred in the Town's Charter shall be vested in a Mayor and a Town Council. The Mayor shall be elected at large by the qualified voters of the Town. One person shall be elected to the Town Council by the qualified voters of each of the Town's six districts.

904.2. Eligibility.

(a) The Mayor. A candidate for Mayor shall be at least 21 years of age on, or before, the date of the election, shall have been a qualified elector of the Town of Elsmere for at least 1 year prior to the date of the election and shall not have been convicted of a felony.

(b) Councilpersons. A candidate for Councilperson shall be at least 21 years of age on, or before, the date of the election, shall have been a qualified elector and resident of the Town of Elsmere for at least 1 year prior to the date of the election, shall at the time of the election reside in the district for which elected, and shall not have been convicted of a felony.

904.3. Terms of elective office.

(a) The Mayor. The Mayor shall be elected at large for a term of two years or until a successor shall be duly elected and qualified. If any of the following occur, there shall be an automatic forfeiture of the office, thereby creating a vacancy: loss of residence in the Town, a conviction of any misdemeanor relating to the conduct of the Mayor's office or any felony, or a failure to attend three consecutive regular meetings of Council without being excused by the Council. Before entering the duties of his/her office, the Mayor shall be sworn, or affirmed, by a Justice of the Peace, or by a notary public, to perform the duties thereof honestly, faithfully, and diligently.

(b) Councilpersons. One Councilperson shall be elected from each district for a term of two years or until a successor shall be duly elected and qualified. If any of the following occur, there shall be an automatic forfeiture of the office, thereby creating a vacancy: loss of residence in the Town or in the district from which elected, a conviction of any misdemeanor relating to the conduct of the Councilperson's office or any felony, or a failure to attend three consecutive regular meetings of Council without being excused by the Council.

(c) In case of a vacancy for any cause, a special election, conducted in the same manner as a regular election, except that the nominating petitions shall be filed no later than 20 days before the date of the special election, shall be held within 60 days after the occurrence of the vacancy, as may be proclaimed by the Council; provided, however, that if the vacancy occurs within 365 days of a regular election, the vacancy shall be filled by appointment by the Mayor subject to confirmation by a majority of the Council.

904.4. Declaration of candidacy.

(a) Any person desiring to be a candidate or to be voted for as a candidate, for nomination for Mayor or Councilperson must file notice in writing to the Town Manager. Such notification shall be made on forms provided by the Town on, or before, 7:00 p.m. of the first Monday in February prior to the biennial Town of Elsmere elections, or the fifth Monday prior to a special election. No person may file as a candidate for more than one office.

(b) All candidates at the time of giving notice, as required in this section, shall tender to the Town a filing fee equal to three percent (3%) of the total salary for the entire term of office for which the candidate is filing.

(c) A candidate for office within the Town of Elsmere shall file a Certificate of Intention, or a Statement of Organization, establishing a campaign committee with the State Election Commissioner no later than 7 days after declaring that candidate's candidacy. A Certificate of Intention is submitted by a candidate when the yearly salary for the office for which that candidate has filed a Declaration of Candidacy is less than \$1,000 or who does not intend to receive more than \$2,000 in contributions, or expend more than \$2000 for campaign expenses during the campaign pursuant to § 8004 of Title 15. Otherwise, no later than 7 days after making expenditures or receiving contributions on behalf of the candidate or committee, the candidate shall notify the Commissioner and file a Statement of Organization.

(d) The State Election Commissioner shall notify the Town of Elsmere Board of Elections when a candidate has failed to comply with the provisions of subsection (c) of this section above.

(e) Excepting candidacies otherwise provided for in the Town charter and which have complied with the provisions of subsection (c) of this section within 5 days after the election, the Town of Elsmere Board of Elections shall declare a candidate who has failed to comply with the provisions of subsection (c) of this section ineligible to be a candidate and shall order that candidate's name removed from the ballot subject to the appeal provisions of Section 905 of this Chapter. Administrative errors or oversights by Town of Elsmere or state officials shall not be grounds for declaring a person ineligible to be a candidate.

(f) Officials receiving any document required in this section shall provide the person filing the document with a receipt showing the date and time that the document was filed and the name of the person who received the document.

(g) Officials receiving any document required in this section shall immediately notify the person submitting the document of any deficiency in the submission. The person submitting the document shall have 2 business days to correct the deficiency even if the extension extends

beyond the applicable deadline. If the person does not correct the deficiency by the end of the second business day, the Town of Elsmere shall reject it.

(h) All documents filed in accordance with this section are public records and the Town of Elsmere shall make them available for inspection by the public in accordance with the Delaware Freedom of Information Act [Chapter 100 of Title 29].

(i) Where the number of qualified candidates for an office is equal to, or less than, the number of seats up for election, the Board of Elections shall declare the candidate or candidates elected.

(j) The Commissioner of Elections shall prepare a package of Municipal Candidate Forms required by this section and instructions for completing and filing the forms. The Commissioner shall provide the Town of Elsmere copies of the Municipal Candidate Forms package and publish the package on the Commissioner of Elections' website. The Town of Elsmere and the Departments of Elections shall publish the Municipal Candidate Forms package on their websites. The Town of Elsmere shall maintain a sufficient supply of Municipal Candidate Forms packages to meet demand.

(k) The Town of Elsmere shall submit the names of candidates for each office up for election to the Department of Elections no later than 1 business day following the filing deadlines for the elected positions.

(l) A person may withdraw as a candidate by filing the form promulgated by the State Election Commissioner for that purpose with the Town of Elsmere. The notice of withdrawal shall be filed before 12:00 noon of the second Monday in February prior to the biennial Town of Elsmere elections, or the fifth Monday prior to a special election. The filing fee shall be refunded after receipt of the notice of withdrawal.

(m) If there are 2 or more candidates remaining on the ballot for the office and there are 14 or more days prior to the date of the election, the Town of Elsmere shall mail new absentee ballots to all persons to whom it had issued absentee ballots. If an absentee voter does not return the replacement absentee ballot before 12 noon the day before the election, the Town of Elsmere shall count the original ballot.

(n) Any votes cast for a person who has withdrawn that person's own candidacy are invalid, and the Town of Elsmere shall not tally, canvass, or report such votes.

905. Complaint procedure.

(a) A citizen of the Town of Elsmere may submit a written complaint, regarding any aspect of pre-election activity that is contrary to the provisions of this Chapter, to the Town of Elsmere

Board of Elections. The complainant shall state with specificity the action, or activity, that is contrary to the provisions of this Chapter. The Town of Elsmere Board of Elections shall meet in a special public meeting held, as soon as practicable, in compliance with the Delaware Freedom of Information Act [Chapter 100 of Title 29] following receipt of the complaint and determine if the complaint has any merit. Within 24 hours of the special public meeting, the Town of Elsmere Board of Elections shall issue a written decision on whether the pre-election action or activity was legally incorrect and ordering lawful action necessary to correct such legal error in the pre-election action or activity. The Board of Elections shall immediately make its decision available to the public.

(b) Decisions and orders of the Town of Elsmere Board of Elections may be appealed to the State Election Commissioner in writing within 2 business days of the Board's decision and order. The Elections Commissioner shall take testimony at a special public hearing that the Commissioner conducts within 4 business days following receipt of the appeal. The Commissioner shall hold the hearing in accordance with the Administrative Procedures Act [Chapter 101 of Title 29] except as provided in this section. The Commissioner shall give 48 hours prior notice to all parties to such special public hearing in lieu of the notice provisions of § 10122 of Title 29. Notice of the hearing shall be posted as well as published on the Commissioner's website in lieu of the notice provisions of § 10124 of Title 29. The Commissioner shall issue a written decision no later than 2 business days following the hearing. Decisions of the Commissioner may be appealed in writing to Superior Court no less than 48 hours before the date of the election.

(c) Notwithstanding the foregoing, at the option of the complainant, he or she may elect to appeal the decision of the Town of Elsmere Board of Elections in writing to the Superior Court no less than 48 hours before the date of the election.

906. Voter eligibility.

Voter eligibility shall be as specified in the Town of Elsmere charter.

907. Form of ballot.

For the purpose of Town elections, a separate form of ballot shall be provided for each district, each ballot shall contain, in addition to the names of the candidates for the Town Council running in that district, the names of the candidates for those offices which are voted upon at large. The ballots provided for the purpose of the Town of Elsmere election shall bear no political party designation.

908. Elections.

(a) A regular Town of Elsmere election shall be held on the last Saturday in April 2007 and on the last Saturday of April in each two years thereafter. Council shall, by ordinances, set the hours

during which the polls shall be open. The Council shall designate the place, or places, of election and make all necessary rules and regulations not inconsistent with this Chapter, or with the general laws of the State of Delaware for the conduct of elections, for the prevention of fraud in elections and for the recount of ballots in case of doubt or fraud. Unless otherwise specified in this Chapter, write-in votes shall not be permitted in any Town of Elsmere election.

(b) At all such elections, the voters shall be received at each polling place by three (3) qualified voters of the Town of Elsmere appointed by the Council. One of the said persons for each polling place shall be designated as the Inspector and the other two as Judges of the election, and the three at each polling place shall be known as Election Officers, and no such person shall be a candidate for office at any such election. In addition to the Election Officers, there shall be two clerks at each polling place. The clerks shall be appointed by the Council from a list of three names from each district. The result of the balloting at each polling place for said officers of said Town shall be ascertained by the said Election Officers, who shall certify said results under their hands to the Council. The Council may appoint clerks to assist the officers of election.

(c) The Inspector shall be the Chief Election Officer in the polling place.

(d) The Inspector shall determine all challenges and all other issues involving the conduct of the election at the polling place. The Board of Elections may provide advice and guidance to the Election Officers.

(e) Election Officers, individually and collectively, shall conduct elections in a fair and equal manner.

(f) Election Officers who violate the provisions of this Chapter shall be removed forthwith by the Board of Elections.

(g) In case of referenda or special elections, the same procedure shall be followed to the extent applicable as with respect to the regular elections, and the penalty for fraud and misconduct shall be the same.

909. Conduct of the election.

909.1. Election Officers shall admit the following persons to the voting room:

(a) Board of Elections members;

(b) Election Officers;

(c) Persons voting and waiting to vote;

(d) A child, or children, 17 years of age or less accompanying the voter;

(e) Department of Elections administrators or employees identified by badge or other authorization;

(f) The State Election Commissioner, or an employee of the Commissioner of Elections' office, identified by badge or other authorizations;

(g) Any person accompanying a Board of Elections member, a Department of Elections administrator, or the State Election Commissioner, except for an elected official of the Town of Elsmere, a candidate on the ballot, or a person associated in any way with the campaign of a candidate on the ballot;

(h) Any other person deemed necessary to the conduct of the election by the Inspector, except for an elected official of the Town of Elsmere, a candidate on the ballot, or a person associated in any way with the campaign of a candidate on the ballot; or

(i) A person or persons required by a voter to assist the voter in voting who is not the voter's employer, agent of that voter's employer or union, or an elected official of the Town of Elsmere, a candidate on the ballot, or a person associated in any way with the campaign of a candidate on the ballot.

909.2. Electioneering.

(a) No Election Officer, challenger, or any other person within the polling place or within 50 feet of the entrance to the building in which the voting room is located shall electioneer during the conducting of the election. No political headquarters, or gathering, shall be permitted within that building during the conducting of the election.

(b) Whoever violates subsection (a) of this section shall be fined not more than \$200 or imprisoned not more than 90 days, or both.

(c) Whoever, being an election officer, violates subsection (a) of this section shall be deemed to have knowingly and willfully violated his or her official duty.

(d) For the purposes of this section the following definition shall apply:

"Electioneering" includes political discussion of issues, candidates or partisan topics, the wearing of any button, banner, or other object referring to issues, candidates, or partisan topics; the display, distribution, or other handling of literature or any writing or drawing referring to issues, candidates, or partisan topics; the deliberate projection of sound referring to issues, candidates, or partisan topics from loudspeakers, or otherwise, into the polling place or the area within 50 feet of the entrance to the building in which the voting room is located.

909.3. Challenges and challengers.

(a) At the Town of Elsmere elections, each candidate on the ballot may appoint and accredit 1 or more suitable persons as challengers. One challenger at a time for each candidate on the ballot at each voting location in a building may be present to observe the conduct of the election and all election records. The challengers may be changed, and their places filled in like manner during the day. Each challenger shall present the Inspector a challenger authorization for that election.

(b) The Inspector shall issue each challenger a challenger badge that the challenger shall wear while in the polling place. If the person leaves the polling place, the challenger shall surrender the badge to the Inspector and retrieve the challenger authorization from the Inspector.

(c) Challengers may act as peace officers with the same powers of preserving the peace as Election Officers. The Election Officers shall protect them in the discharge of their duty, as long as the challengers do not create any disturbance or obstruction and do not unreasonably prolong any challenge. The Inspector shall caution challengers concerning the foregoing. If a challenger persists in objectionable behavior, the Inspector may eject the challenger. Nothing in this subsection of this section shall prevent the substitution of another challenger for 1 whom the Inspector ejected.

(d) If an Inspector willfully ejects a challenger without cause, that Inspector shall be deemed to have knowingly and willfully violated that Inspector's own official duty.

(e) Any person legally in the polling place may challenge any voter for identity, address, or bribery. The Inspector shall hear each challenge before the person being challenged enters a voting machine. Once the Inspector decides the challenge, the matter is decided, and the challenged person will be either permitted to vote, or not permitted to vote, depending on the decision. A person denied permission to vote shall leave the polling place immediately. A person challenged for bribery may take and subscribe to the oath as provided in § 4940 of Title 15. Once the person has taken and subscribed to the oath, the person shall be permitted to vote.

909.4. Voting machines; election supplies; certification.

(a) Two members of the Town of Elsmere Board of Elections conducting an election shall certify the voting machines to be used in the election prior to the voting machines being delivered to the polling place or places.

(b) The Town of Elsmere shall be responsible for providing pens, rubber bands, tape, and other supplies needed at the polling place.

909.5. Oath of office.

Before opening the election, the Inspector, and any other appointed Election Officer, shall subscribe to the following oath:

I do solemnly swear (or affirm) that in the election to be held on the

____ day of ____ A.D., I will not knowingly or willfully receive or consent to the receiving of the vote of any person who is not a citizen, and also that I will not receive or consent to the receiving of the vote of any person whom I shall believe not entitled to vote, unless my associates shall adjudge such person to be entitled to vote. That I will not receive or reject, nor concur in receiving or rejecting any vote through partiality or under bias, and that I will determine every matter that shall come before me and perform every act and duty by law required of me, touching the election, truly, faithfully and impartially, according to the best of my skill and judgment; that I have not received, nor will I receive directly or indirectly from or through any candidate to be voted for at such election, or any other person, any money, pay or other valuable thing or reward; that I have not been promised, or in any manner been led to believe that I will at any time directly or indirectly receive any money, pay or other valuable thing or reward from such candidate or other person other than that provided by law and if I shall discover any partiality, unfairness or corruption in the conduct of the election, I shall disclose the same to the Board of Elections that is conducting the election and to the Attorney General to the end that the subject may be investigated, so help me God (or so I solemnly affirm).

909.6. Bribery.

(a) No person who is accused of receiving or accepting or offering to receive or accept, or pays, transfers or delivers, or offers or promises to pay, transfer or deliver, or contributes or offers or promises to contribute to another to be paid or used any money or other valuable thing as a compensation, inducement or reward for giving or withholding or in any manner influencing the giving or withholding a vote at any Town of Elsmere election, shall vote at such election unless such person being challenged for any of said causes takes and subscribes to the oath or affirmation as provided for in § 4940 of Title 15.

(b) Such oath or affirmation shall be conclusive evidence to the Election Officers of the truth of such oath or affirmation, but if any such oath or affirmation shall be false, the person making the same shall be guilty of perjury, and no conviction thereon shall bar any prosecution under § 8 of Article V of the Constitution of this State. Such oath or affirmation, when signed and attested as provided in this section shall be competent evidence in any proceeding against the party making the same.

909.7. Polling Places.

Polling places shall be convenient and readily accessible to the voters.

909.8. Preparing the polling place prior to the election.

(a) The Election Officers for each polling place shall arrive at least 1 hour prior to the time set for opening of the polls and shall proceed to arrange the furniture, documents, forms, envelopes, signs, posters and voting machines for the conduct of the election. They shall inspect the ballot cover and curtain of the machine, or machines, to make certain that the machine, or machines, have not been damaged or tampered with in any manner. The Election Officers shall also take reasonable steps to ensure that no mirror or camera is in a position that would permit anyone to view the ballot.

(b) The Election Officers shall post or place the following posters and signs as follows:

(1) In the voting room:

(A) A voter information poster that includes information on voter eligibility, the date of the election and the hours that the polling place, or places, are open, general information on the right to vote, instructions on how to contact the appropriate officials if these rights are alleged to have been violated, and general information on the prohibition of acts or frauds and misrepresentation;

(B) A sample ballot; and

(C) Instructions on how to use the voting machine.

(2) At each voting machine:

(A) A sample ballot; and

(B) Instructions on how to use the voting machine.

(3) At the entrance to the voting area:

- (A) A poster that indicates that the room or area is a polling place;
- (B) A voter information poster as described above; and
- (C) A sample ballot.

(4) Signs marking the route between the entrance and the accessible entrance and the voting room.

(5) A poster, or other visible object, at the entrance to the building used by voters and at the accessible entrance, if different, that marks the building as a polling place.

(6) Outside of the building where the polling place is located:

- (A) Signs that mark that the building is a polling place;
- (B) Signs that mark the accessible route from parking to the accessible entrance; and
- (C) Signs that mark, or point, to the accessible entrance.

(c) The Department of Elections shall provide a Voting Machine Certificate that lists the serial number, ballot number, machine case seal number, printer door number, and the protective counter number for each voting machine assigned to the district (where voting by district is permitted) or polling place. Each Election Officer shall witness and verify that the numbers listed on the Voting Machine Certificate are the same as the voting machine serial number, case seal number, printer door seal number, ballot number and protective counter number on the voting machine. If a number is different, the Inspector shall strike through the number, enter the appropriate correction, and initial the entry on each of the certificates.

(d) The Election Officers shall then observe the opening of the polls procedure for each voting machine assigned to the district or polling place. If the light in the "polls ready to open" box on the officer's control panel is in any other but the top position prior to the Inspector pressing the open polls button, stop the procedure and contact the Board of Elections. The machine cannot be used. If, during the opening of the polls procedure, the paper tape shows "error all counters not zero," stop the procedure and contact the Board of Elections. The machine cannot be used. At the conclusion of the open polls procedure for each voting machine assigned to the district or polling place as appropriate, each Election Officer signs the paper tape. Each Election Officer shall then sign § 1 of the Voting Machine Certificate after any discrepancies that were observed were noted on the certificate.

(e) At the time the polls are scheduled to open, the Inspector shall admit voters and authorized challengers to the voting room.

909.9. Voting procedure.

(a) Since the Town uses the State's voter registration information as the basis of permitting a person to vote, the following procedure applies: a person shall show proof of identity and address, the Election Officer shall circle the person's name on the Poll List, have that person sign the Voter Log, give the person an authorization to vote, and direct that person to the voting machine.

(b) If the Election Officer determines that the person is not eligible to vote in the election, the Election Officer shall refer the person to the Inspector. The Inspector, after hearing and considering evidence, shall determine whether to permit the person to vote. Upon making the decision, the Inspector shall appropriately annotate the Poll List and/or Voter Log.

(c) If a person's eligibility to vote is challenged by anyone, for any reason, the Inspector shall immediately hear and consider the evidence and then decide whether the person is eligible to vote. Once the Inspector has made that Inspector's decision, there is no appeal at the polling place.

909.10. At the close of the polls; unofficial results.

(a) Thirty minutes prior to the closing of the polls, the Inspector shall announce or have another Election Officer announce, that the polls shall close in 30 minutes both in the voting room and outside of the entrance of the building used by voters.

(b) At the time that the polls close, the Inspector shall announce or have another Election Officer announce, that the polls have closed both in the voting room and outside of the entrance to the building used by voters. The Election Offices shall permit any person to vote who was in line at the time the polls closed.

(c) The Election Officers shall remove the cartridges and tapes from each voting machine, record the protective counter and seal numbers on the Voting Machine Certificate, close the voting machines, complete the Vote Tabulation for the election, and post a copy of the results tape from each voting machine on the door of the polling place.

(d) The Election Officers, as soon as possible after the polls have closed and the unofficial results announced, shall deliver all election documents, envelopes and absentee ballots to the Town of Elsmere's Board of Elections.

(e) The Town of Elsmere's Board of Elections shall secure the documents, envelopes and absentee ballots until such time that they need to canvass the election.

910. Rules regarding what constitutes a legal vote.

(a) Votes cast on a direct recording electronic voting machine shall be considered legal votes once the voter has taken the necessary action(s) to cast a ballot. A voter who has cast a ballot on a direct recording electronic voting machine shall not be permitted to cast a 2nd ballot under any circumstances.

(b) Votes cast at any election on paper ballots shall be counted for whom they are intended as far as can be ascertained by the marks on the ballot. The following rules shall be observed in determining those votes on paper ballots that shall be counted:

(1) The voter shall mark the ballot for the voter's selections by placing a distinct mark in the box at the right of the name of the candidate, and or response to a question, for which the voter wants to vote;

(2) Where a voter indicates the voter's own selections in a manner not in accordance with subdivision (b)(1) of this section, the election officers shall attempt to determine from the marks on the ballot the candidate or response that the voter intended to select;

(3) If it is not possible to determine a voter's choice for an office or response to a question, the ballot shall not be counted for that office or question but shall be counted for all other offices and questions on the ballot where the voter's intention can be determined;

(4) A voter may only vote for 2 or more choices for any office or question when specifically instructed on the ballot that it is allowable;

(5) Where a voter is permitted to make more than 1 choice for candidates and/or responses to a question, the voter may make fewer than the allowable number of choices;

(6) If a ballot is marked for more names or responses than are permitted, it shall not be counted for that office or question, but it shall be counted for all other offices or questions on the ballot in accordance with these rules; and

(7) If a ballot has been defaced or torn so that it is impossible to determine the voter's choice for 1 or more offices or questions, it shall not be counted for such offices or questions but shall be counted for all other offices and questions where the voter's choice(s) can be determined.

(c) The State Election Commissioner, in collaboration with the Departments of Elections, shall promulgate the documents, forms, and envelopes required by this Chapter.

(d) The Town of Elsmere shall contract with the Department of Elections to conduct an election to elect members of the Town of Elsmere at least 60 days prior to the date of the election.

(e) A voter may ask a person or persons of that voter's choice, who is not that voter's employer or an agent of that voter's employer or union, to assist that voter in voting.

911. Election results; recounts; contests.

911.1. General.

(a) A person certified as being elected shall not take office before the seventh day following the election.

(b) The Town of Elsmere Board of Elections shall announce the results of an election as soon as possible following the close of the polls.

(c) The Board of Elections shall recount the absentee ballots if the difference between the top two candidates is $\frac{1}{2}$ of 1%, or less than the total votes cast for the office. Where electors vote for more than 1 candidate for an office, the Board of Elections shall recount absentee ballots if the difference between the last candidate elected and the next closest candidate is $\frac{1}{2}$ of 1%, or less than the total votes cast for the office.

(d) The Board of Elections, following certification of the election and the resolution of any contest, shall audit the election records in order to reconcile the number of voters who cast ballots as compared to the number of voters who returned absentee ballots and voted on voting machines. The results of this audit shall be reported to the Mayor and be made available for public review.

911.2. Who may contest; causes.

Any person claiming to be elected to an office within the Town of Elsmere may contest the right of any person declared to be duly elected to such office for any of the following causes:

(a) For malconduct on the part of the election officers or clerks holding the election, or any one of them;

(b) When the person whose right to the office is contested was not at the time of the election eligible for such office;

(c) When the person whose right is contested has given to any elector, inspector, judge, or clerk of election any bribe or reward or shall have offered any bribe or reward for the purpose of procuring his or her election;

(d) On account of illegal votes.

911.3. Irregularities not invalidating election.

No inequality or improper conduct in the proceedings of the Election Officers or clerks or any one of them shall be construed to amount to such misconduct as to annul or set aside any election unless the inequality or improper conduct shall have been such as to procure the person whose right to the office may be contested to be declared duly elected when he or she has not received the highest number of legal votes cast at the election.

911.4. Requirements to set aside election because of illegal voting.

Nothing in Section 911 of this Chapter shall be so construed as to authorize an election to be set aside or annulled on account of illegal votes unless it shall appear that an amount of illegal votes has been given to the person whose right to the office is contested which, if taken from the person, would reduce the number of the person's legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

911.5. Circumstances under which contestant need not claim to have been elected.

When an election is contested because of alleged misconduct of the Election Officers holding the election, or because the person whose right to office is contested was not eligible for such office, a proceeding may be instituted under Section 911 of this Chapter against such person by the person who received the next highest number of votes for the office at the election under which such ineligible person was declared elected, notwithstanding the person so contesting the election does not claim to have been elected.

911.6. Statement of contestant; contents.

When any person authorized to do so under Section 911 of this Chapter desires to contest the right of any person declared duly elected to such office, he or she shall, within 20 days after the result of the election shall have been officially ascertained by the board of canvass, or officers legally authorized to ascertain the same, and at least 60 days before the first day of the term of court at which the contest shall be tried or called for trial, file with the Prothonotary in the county in which the contest is made a full, particular, and explicit statement setting forth fully and specifically the names of any, and all, Election Officers upon the misconduct of whom he or she will rely and respecting which he or she intends to procure evidence, and setting forth the election districts of such Election Officers and the particular misconduct of each, respectively, the names and residences of the witnesses and the substance of their testimony, by whom he or she expects to prove such misconduct. If such contest is based upon ineligibility of a person to hold the office, the statement shall specifically, fully, and explicitly state the grounds and causes of the ineligibility of the person whose right to the office is contested. When such contest is based on alleged bribe or reward, or the offer of a bribe or reward, the statement shall explicitly, fully, and clearly state the name of any elector, Election Officer, or other person to whom any bribe or reward shall have been offered and the time, place and amount of such bribe or reward and the name and residence of the witnesses by whom the contestant expects to prove the offering of any bribe or reward, with a brief statement of their testimony. When the contest shall be on the ground of illegal votes, the statement shall specifically, fully, and explicitly set forth the names, residences and respective causes of disqualification of each person alleged to have illegally voted, the polls at which such illegal vote has been received, the names of the Election Officers favoring the acceptance of such vote, whether such vote was challenged by the duly accredited challenger of the party of which the contestant was the candidate, and whether all the judges or inspectors present at such polls concurred in accepting and receiving such vote. If it appears that all of such judges or inspectors concurred in accepting or receiving such vote, or that the right of the voters, respectively, to deposit such votes was not at the time challenged by the duly accredited challenger of the party of which the contestant was a candidate, the legality or illegality of such vote shall not be brought into question in any such contest. The statement shall further set forth the names and residences of the witnesses who shall be produced on behalf of the contestant to prove such illegal votes and the substance of the testimony to be given by each.

911.7. Verification of contestant's statement.

The statement shall be verified by the oath of the contestant that the matters therein set forth are, so far as they relate to his or her own act and deed, true and that what relates to the act and deed of any other person he or she believes to be true.

911.8. Security for costs.

Any person contesting any election under Section 911 of this Chapter shall be required to give security for costs in such amount and manner as the court shall order. Such security, however, shall in no case be enforced unless judgment for costs be rendered against the contestant.

911.9. Citation; service and return.

Before the statement is filed, the Prothonotary shall docket the case in the appearance docket and immediately issue a citation for the person whose right to the office is contested to appear on the first day of the second term of the Superior Court to make such defense as he or she may have, which citation shall be delivered to the sheriff or, if the sheriff be a party to the contest, to the coroner of the county, and be served by him or her upon the party defendant in person or, if the party defendant cannot be found, by leaving a copy thereof at the house where the party defendant last resided at least 5 days before the day to which such citation is returnable. The original citation shall be returned to the Prothonotary, on or before, the first day of the next term of Court after it is issued, and the manner of service shall be endorsed thereon and signed by the officer serving the same.

911.10 Dismissal of proceedings.

The Court may dismiss the proceedings if the statement of the cause, or causes, of contest do not conform to the requirements set forth in Section 911 of this Chapter or for want of prosecution.

911.11. Trial.

If proceedings are not dismissed, the case shall proceed upon its merits and be tried and determined by the Court by the rules of law and evidence governing the determination of questions of law and facts in the Superior Court, so far as the same are applicable.

911.12. Trial by Court; by jury.

All cases of contest under Section 911 of this Chapter shall be fully heard and determined by the Court, without the aid or intervention of a jury, unless 1 or both of the parties to the contest shall claim a trial by jury, and the Court shall, in its judgment, determine that it is a case which, under the Constitution and laws of this State, the party or parties are entitled to a trial by jury. In such

case a jury shall be empanelled and the cause proceeds according to the rules and practice of the Court in jury trials.

911.13. Proof and evidence limited by statement.

At the trial of any contest under Sections 911 of this Chapter the contestant shall be limited in his, or her proof and in the admission of evidence to the witnesses named in the statement, and the witnesses shall be limited in their testimony to the facts set forth in the statement with respect to which it shall be stated that they will be expected to testify.

911.14. Examination of ballots by Court.

In the trial of any contested election under Sections 911 of this Chapter, the Court may make an examination of the ballots given in such election, except that wherever the ballot boxes, ballots, poll lists, tally sheets, or other books or records pertaining to any election, excepting the certificate of election of the officer against whom the contest may be made, duly signed by the Court constituting the board of canvass and under the seal of court, and delivered according to law, shall have come in any way, legally or illegally, into the possession, care or custody of any person, officially or otherwise, who shall have been a candidate and voted for upon the same official ballot as a candidate of the same political party as the contestant, no such ballot boxes, poll lists, tally sheets or other books or records pertaining to the said election, excepting the certificate of election, shall be offered in evidence in any contest begun or prosecuted under the provisions hereof, and the Court may make and enforce by attachment all necessary orders to obtain possession of the same.

911.15. Judgment.

(a) After hearing the allegations and proofs in the cause the Court shall render judgment (in accordance with the verdict of the jury, if a jury shall have tried the cause) either confirming or annulling such election altogether.

(b) If it appears by the judgment of the Court or the verdict of the jury (if there be a jury) that any other person than the one whose election is contested received the highest number of legal votes, judgment shall be rendered declaring such person duly elected.

(c) When the person whose election is contested is proved to be ineligible to the office, judgment shall be rendered declaring the election void and the office vacant, and such proceedings shall then be had as in vacancies happening from any other cause. When it shall appear that 2 persons have received an equal number of legal votes for the same office, the provisions of law for the settlement of such cases shall prevail, if there be any such provision; if there be none, then the

office shall be adjudged and declared vacant, and such proceedings shall then be had as in vacancies happening from any other cause.

911.16. Costs.

(a) Costs in all cases under Section 911 shall be awarded against the unsuccessful party to the contest.

(b) Charges for costs shall be as near as possible to the charges for similar services in other cases tried in the Superior Court.

(c) Execution may issue to collect costs.

912. Unopposed candidates and cancellation of the biennial election.

912.1. Individual candidates who are unopposed.

If upon the expiration of the date and time provided for withdraw of nomination in Section 904.4(a) of this Chapter, only one candidate has filed for a particular council district or for a particular office that is voted upon at large, neither the candidate nor the particular office shall appear on the official ballot of the Biennial Town Election. These unopposed candidates shall be deemed to have been elected to the office to which they filed.

912.2. Cancellation of the biennial election.

If upon the expiration of the date and time provided for withdraw of nomination in Section 904.4(a) of this Chapter, only one candidate has filed for each particular council district and for each of the offices that are voted upon at large, there shall be no Biennial Town Election. Each of the unopposed candidates shall be deemed to have been elected to the office to which they filed. Town Council shall make public notice that the General Town Election is canceled and shall list the names of all unopposed candidates and the office to which they will serve.

913. Absentee voting.

913.1. Persons eligible to vote by absentee ballot.

Any qualified elector who is duly registered may vote by absentee ballot in any Town of Elsmere election for any of the following reasons:

(1) Because such person is in the public service of the United States or of this State, or is a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia, or such person's spouse or dependents when residing with or accompanying the person, or is absent from this State because of illness or injury received while serving in the armed forces of the United States;

(2) Because such person is in the armed forces of the United States, or the Merchant Marines of the United States, or attached to and serving with the armed forces of the United States in the American Red Cross, Society of Friends, or United Service Organizations; or

(3) Because of the nature of such person's business or occupation, including the business or occupation of providing care to a parent, spouse or that person's child who is living at home and requires constant care due to illness or injury;

(4) Because such person is sick or physically disabled;

(5) Because such person is absent from the Town of Elsmere while on vacation;

(6) Because such person is unable to vote at a certain time, or on a certain day, due to the tenets or teachings of that person's religion;

913.2. Request for ballot; affidavits for absentee ballots; delivery of absentee ballots.

(a) An elector desiring to vote by absentee ballot in a Town of Elsmere election for which the elector is a qualified elector may request an absentee ballot from the Town of Elsmere by filing a written affidavit with the Town of Elsmere no later than 12:00 noon the day before the election.

(b) An affidavit may be filed pursuant to this section by mailing it, delivering it, or causing it to be delivered to the Town of Elsmere.

(c) Affidavits filed pursuant to this section shall:

(1) Indicate the election, or elections, for which the elector is requesting an absentee ballot;

(2) Include at least the following information:

a. The elector's name;

b. The address within the Town of Elsmere at which the elector establishes eligibility to vote;

c. The address to which the elector requests that the absentee ballot be mailed;

d. The elector's date of birth;

- e. The elector's expected location on election day;
- f. The reason that the elector cannot appear at the regular polling place on the day of the election which reason shall be any of the reasons listed in Section 913.1 of this Chapter.
- g. A telephone number, if available, to assist in resolving any challenge;
- h. An e-mail address, if available, to assist in resolving any challenge; and
- i. The elector's signature;

(3) Be subscribed and sworn to by the elector, before an officer authorized by law to administer oaths affirming that under penalty of perjury, the information on the affidavit is correct and true, except that the affidavit for a person voting in person at the Town of Elsmere shall not be notarized but shall be accepted upon the voter presenting a form of ID acceptable by a notary.

(d) Notwithstanding any other provision of this section to the contrary, the affidavit of any elector desiring to receive an absentee ballot because the person qualifies under any of the reasons set forth in Sections 913.1(1), (2), (4) of this Chapter may be self-administered.

(e) The State Election Commissioner shall create an absentee affidavit template that the Town of Elsmere shall use in creating its own absentee affidavit by adding additional reasons that a person may vote by absentee ballot. The State Election shall also designate envelopes and create a set of instructions for voters casting their votes by absentee ballot that the Town of Elsmere may use to comply with the provisions of this subchapter.

(f) The Town of Elsmere may adopt a printed or electronic affidavit form (or both), containing blanks associated with each item required by this section to be listed on an affidavit, which may be completed by any elector wishing to receive an absentee ballot pursuant to this section. An elector may submit a written or electronic request to the Town of Elsmere for the Town's prepared affidavit form, which the Town of Elsmere shall forward to the elector upon receipt of a request therefore.

913.3. Distribution of ballots, envelopes, and instructions; envelope specifications; prepaid postage.

(a) Upon receipt of an affidavit from an elector pursuant to Section 913.2 of this Chapter, the Town of Elsmere shall process the same and confirm that the elector qualifies for an absentee ballot pursuant to Section 913.1 of this Chapter.

(b) Not more than 60 nor less than 4 days prior to an election, and within 3 days after the absentee ballots, envelopes, and instructions therefore become available, the Town of Elsmere

shall mail, to each elector who requests and qualifies for an absentee ballot pursuant to Section 913.1 of this Chapter, the following:

- (1) An absentee ballot for the Town of Elsmere election in which the elector is qualified to vote;
- (2) Instructions for completing the absentee ballot and returning it to the Town of Elsmere, marked "INSTRUCTIONS FOR COMPLETING AND RETURNING AN ABSENTEE BALLOT"; and
- (3) An envelope marked "BALLOT ENVELOPE", which shall be:
 - a. Of the type known as a security mailing envelope, designed to securely protect the contents thereof from tampering, removal, or substitution without detection;
 - b. Large enough to carry the ballot; and
 - c. Addressed for return to the Town of Elsmere.

(c) Postage for all mailings made pursuant to this subsection shall be prepaid by the Town of Elsmere.

(d) Nothing contained in this section shall prevent the issuance of an absentee ballot to those lawfully entitled thereto when the request is made less than 4 days prior to the election.

913.4. Requirements for ballot envelope; numbering and coding; voter identification label; affidavit of eligibility.

(a) The Town of Elsmere shall provide to each elector to whom it sends an absentee ballot an envelope which shall be:

- (1) A color other than white;
- (2) Large enough to hold a completed ballot; and
- (3) Designed to protect its contents from tampering, removal or substitution without detection.

(b) Upon each envelope provided pursuant to this section shall appear:

- (1) The words "BALLOT ENVELOPE";
- (2) An alpha-numeric symbol and/or barcode for use in accounting for the absentee ballot;
- (3) Identification information for the elector receiving the absentee ballot, including: the name of the municipality where the elector is qualified to vote; the elector's name; the elector's mailing address; the address within the Town of Elsmere that establishes the elector's eligibility

to vote if different from the elector's mailing address; and such other information as the Town of Elsmere may require; and

(4) The following oath:

"I do solemnly swear (affirm) that to the best of my knowledge I am a bona fide resident of the Town of Elsmere and will be on the date of the election, that I am eligible to vote in this Town of Elsmere election, and that the address that appears on the label on this envelope is the address at which I am qualified to vote in this Town of Elsmere election. I also do solemnly swear (affirm) under penalty of perjury that I have not received or accepted, or offered to receive or accept, any money or other item of value as compensation, inducement or reward for the giving or withholding of a vote at this Town of Elsmere election, nor that I am acting under duress or threat of duress or harm."

(5) The voter's signature.

913.5. Voting procedure; execution of affidavit; return of ballot.

The procedure for completing an absentee ballot and returning it to the Town of Elsmere is as follows:

(1) An elector who receives an absentee ballot pursuant to this Chapter shall complete the ballot by marking it with the elector's selections and shall place the completed ballot in the envelope marked "BALLOT ENVELOPE."

(2) The elector shall confirm that the information about that elector on the ballot envelope is correct and then sign the self-administered oath.

(3) The elector shall then seal the ballot envelope.

(4) The elector shall return the sealed ballot envelope to the Town of Elsmere by:

a. Depositing it in a United States postal mailbox, thereby mailing it to the Town of Elsmere; or

b. Delivering it, or causing it to be delivered, to the Town of Elsmere before the polls close on the day of the election.

913.6. Time limit for return of ballot; late ballots.

(a) The Town of Elsmere shall endorse the date and time of receipt on the ballot envelope of each absentee ballot received by the Town of Elsmere.

(b) For an absentee ballot to be counted pursuant to this Chapter, an elector voting by absentee ballot shall return the elector marked ballot to the Town of Elsmere before the polls close on the day of the election.

(c) The Town of Elsmere shall retain, unopened, any ballot envelope it receives after the polls close on the day of the election for 60 days after the election, or longer if directed by proper authority or required to do so by federal law.

913.7. Procedure on receipt of ballot envelope by the Town of Elsmere.

(a) Upon receipt of a ballot envelope, the Town of Elsmere, or a person authorized by the Town of Elsmere, shall:

(1) Ascertain the names of each elector as they appear on the face of each ballot envelope;

(2) Ascertain from the information on the ballot envelope the Town of Elsmere election district with whose votes the ballot within it shall be tallied; and

(3) Place the ballot envelope in a secure location until such time as it is opened and the ballot within it is counted.

(b) No agent or employee of the Town of Elsmere shall open or attempt to open the ballot envelope, or change or alter or attempt to change or alter the ballot envelope, or any writing, printing or anything whatsoever thereon.

913.8. Counting procedure for absentee ballots.

At any time between the opening and the closing of the polls on an election day, absentee election judges selected by Town of Elsmere's Board of Elections, shall count absentee ballots at a properly noticed public meeting in the Town of Elsmere's offices or at the place of the election, at the Town of Elsmere's discretion, in accordance with the procedures set out below. Anything herein to the contrary notwithstanding, at the discretion of the Town of Elsmere, the Board of Elections may itself act as the absentee election judges.

(1) The Town of Elsmere's Board of Elections shall appoint a sufficient number of teams of absentee election judges, each consisting of an odd number of electors, to open and tally the absentee ballots before the close of the polls. The Board of Elections shall be responsible for deciding all challenges and overseeing the process.

(2) The Town of Elsmere shall provide a list of persons who have returned absentee ballots for review by the public and challengers at the meeting. Challenges must be made prior to the opening of the ballot envelope for the voter being challenged.

(3) If a person has challenged an absentee voter as provided in Section 909.3(e) of this Chapter, an absentee election judge shall give that person's ballot envelope to the Board of

Elections who shall then hear the evidence and decide the challenge. If the Board of Elections upholds the challenge, the chairperson shall write the word "CHALLENGED" on the ballot envelope, the reason for the challenge and then sign the chairperson's own name. When the challenge is denied, the ballot envelope shall be returned to the team to be opened and counted. The Board of Elections, after the close of the polls, shall seal the ballot envelopes for all voters who were successfully challenged in a carrier envelope along with a log sheet showing the serial number of the carrier envelope.

(4) Where absentee ballots have been prepared for counting in advance of the opening of the polls in accordance with Section 913.9 of this Chapter and are in a carrier envelope, the absentee election judges, upon opening a carrier envelope, shall verify that the serial number on the log sheet is the same as the serial number on the carrier envelope. If the numbers are not the same, the judges shall report the discrepancy to the Board of Elections and then follow the instructions of the board regarding that carrier envelope. If there are no discrepancies or the discrepancy has been resolved, the team shall remove the ballots from the carrier envelope.

(5) Where the ballots are in the ballot envelopes, a team of absentee election judges shall:

a. Check the ballot envelopes against the list of absentee voters. The teams shall not process any ballot envelopes that the Town of Elsmere has not listed as returned on the list of absentee voters until the discrepancy has been resolved to the Board of Elections' satisfaction.

b. Reject ballot envelopes that the voter did not sign or seal, or for a voter who is known to be dead. An absentee election judge shall print the word "REJECTED" and the reason for the rejection on the front of the ballot envelope and then at least 2 of the absentee elections judges shall initial beside the entry.

c. Open each ballot envelope in such a manner as not to deface or destroy the self-administered affidavit thereon or the absentee ballot enclosed and then remove the ballot in such manner as to avoid seeing the markings thereon from the ballot envelope. If there is no ballot in the ballot envelope or if there is more than 1 ballot in a ballot envelope, an absentee election judge shall write the word "REJECTED" and the reason for the rejection on the front of the ballot envelope and then at least 2 absentee elections judges shall initial beside the entries. In the case where there was more than 1 ballot in a ballot envelope, the team shall put the ballots back into the ballot envelope.

d. Once an absentee ballot judge has removed a ballot from a ballot envelope, the judge shall put it face down on the table without examining it. The team shall open ballot envelopes until they have a sufficient number of ballots and ballot envelopes to fill a carrier envelope, create a predetermined batch, or they have opened all of the ballot envelopes for a Town of Elsmere election district or the election, whichever occurs first. The team shall then shuffle the ballots and then proceed to tally the votes for that group of ballots.

(6) The team of absentee election judges shall then tally the votes for a group of ballots on absentee vote tally sheets with one 1 person reading the votes and 2 others tallying the votes on separate absentee vote tally sheets. Once the team has tallied a group of ballots, they shall verify that the results on both absentee vote tally sheets are the same. If the results are not the same, the team shall re-tally the votes until the result is the same. During the tally process, the team shall attempt to determine the voters' intent pursuant to Section 910 of this Chapter in the event that a voter did not mark the ballot as instructed.

(7) Once a team has tallied the absentee votes for a group of ballots, the members shall sign both copies of the absentee vote tally sheet and then put the voted ballots, rejected ballots, ballot envelopes, and 1 copy of the absentee vote tally sheet into a carrier envelope. The team shall then complete the log sheet showing the serial number of the carrier envelope, put the log sheet into the carrier envelope and then seal the carrier envelope. The team shall then give the carrier envelope and the second copy of the absentee vote tally sheet to the Board of Elections.

(8) Upon receipt of a carrier envelope and the second copy of the absentee vote tally sheet for that carrier envelope, the Board of Elections shall:

a. Put the carrier envelope in a secure location until such time as it is needed for a recount, legal action, or is to be destroyed as provided in this chapter; and

b. Record the results from the absentee vote tally sheet onto a master absentee vote tally sheet for the election. After the Board of Elections has received all of the absentee vote tally sheets and has entered the results for each candidate on the master absentee vote tally sheet, the board shall total the votes for each candidate and then, after the polls have closed, enter the results on the vote tabulation for the election. The Board of Elections shall then seal the absentee vote tally sheet, or sheets, in a carrier envelope along with a log sheet showing the serial number of the carrier envelope.

(9) Ballot envelopes received after the ballots have been counted, or the ballots for a specific Town of Elsmere election district have been counted, shall be opened and tallied in accordance with the above procedure except that they all shall be sealed in 1 or more carrier envelopes, as necessary, after the polls have closed.

(10) The teams shall repeat the above process as many times as necessary in order to count the absentee ballots.

(11) The Town of Elsmere shall establish a procedure to insure that persons who voted by absentee ballot shall not be permitted to vote at a polling place on the day of the election.

(12) Anything herein to the contrary notwithstanding, when the number of absentee ballots returned to the Town of Elsmere is less than 5; the Town of Elsmere may develop a counting procedure protective of the secrecy of the ballot.

913.9. Preparing absentee ballots to be counted.

Notwithstanding any other provision of this chapter, the Town of Elsmere Board of Elections may open absentee ballot envelopes in a public meeting in order to prepare them to be counted. Such meeting shall take place, upon proper notice, at any time between 8:00 a.m. of the day prior to the election and up to 1 hour before the polls are scheduled to open. The Town of Elsmere shall notify each candidate on the ballot that they may have challengers at the meeting during which the Board of Elections opens the absentee ballots. At such meeting, the Board of Elections shall act in accordance with the same procedures as set out in Sections 913.8(1), (2), (3), and (5)(a) through (d) of this Chapter inclusive, with the exception that the absentee ballot judges shall not proceed to tally the votes for any group of ballots, but shall then secure such ballots, ballot envelopes, and any rejected ballot envelopes in a carrier envelope along with the log sheet showing the serial number of the log sheet. The absentee ballot judges shall then seal the carrier envelope, or envelopes, and deliver it/them to the Board of Elections. The Board of Elections shall then secure the carrier envelope, or envelopes, in locked cabinets until opened at a subsequent public meeting to tally the ballots on the day of the election in accordance with Sections 913.8(4) and (6) through (10) of this Chapter.

913.10. Carrier envelope specifications; carrier envelopes as ballot boxes.

(a) The Town of Elsmere shall purchase envelopes to be used as carrier envelopes, which shall be security mailing envelopes, designed to securely protect the contents thereof from tampering, removal, or substitution without detection and shall be large enough to accommodate multiple absentee ballots cast in the election.

(b) Carrier envelopes shall:

(1) For all purposes of this Chapter, be considered the official ballot boxes for absentee votes cast during a given election;

(2) Contain voted absentee ballots from Town of Elsmere;

(3) Be labeled to reflect that the Town of Elsmere's absentee ballots are held inside; and

(4) Ensure the security of said ballots in the event they must be moved for the purposes of certifying an election or recounting votes cast in an election.

(c) A sealed carrier envelope may be reopened only when necessary to certify an election or recount votes cast in an election.

(d) In the event the Town of Elsmere must move absentee ballots for the purposes of certifying an election, or recounting votes cast in an election, it shall select the carrier envelopes for the affected Town of Elsmere election districts and move them, in a secure fashion, to the location where the carrier envelopes will be opened and the votes inside inspected.

(e) Upon completion of any inspection of votes pursuant to this subsection, absentee ballots shall be returned to the carrier envelopes from which they were removed and the carrier envelopes shall be:

(1) Resealed in a secure manner, or shall be placed in another security envelope, for the purposes of securely protecting the contents thereof from tampering, removal, or substitution without detection; and

(2) Put the carrier envelope in a secure location until such time as it is needed for a recount, legal action, or is to be destroyed as provided in this Chapter.

913.11. Challenges.

(a) The ballot of any elector choosing to vote by absentee ballot may be challenged for the same causes and in the same manner as provided in this Chapter for other voters.

(b) In addition, the vote of an absentee voter may be challenged:

(1) On the ground that the affidavit filed by the voter in compliance with Section 913.2 of this Chapter is false; or

(2) On the ground that the self-administered affidavit on the ballot envelope is not signed.

(c) If a challenge is made pursuant to subsection (a) of this section, an absentee judge shall return the ballot to its ballot envelope, shall mark the ballot envelope as "CHALLENGED", and shall set the envelope aside in a secure location for consideration at a later time as provided elsewhere in this Chapter. If a challenge is made pursuant to subsection (b) of this section, an absentee judge shall mark the ballot envelope as "CHALLENGED" and shall set it aside in a secure location for consideration at a later time as provided elsewhere in this Chapter.

(d) All challenges to absentee ballots must be resolved before the counting of votes may be considered complete. Any challenge not resolved by the absentee judges within a reasonable time of the challenge having been made, shall be referred to the Town of Elsmere's Board of Elections for the Town of Elsmere for resolution.

913.12. Rejected ballots.

(a) No vote shall be accepted or counted if:

(1) The affidavit of the absentee voter that appears on the front of the ballot envelope is found to have been altered or is not signed; or

(2) The absentee voter is not a duly qualified elector entitled to vote in the Town of Elsmere;

- (3) The ballot envelope is open; or
- (4) It is evident that the ballot envelope has been opened and resealed;
- (5) It is evident that the ballot envelope has been tampered with or altered.

(b) If the ballot envelope has not been opened at the time an absentee judge decides that the offered ballot contained therein should not be accepted or voted for any of the reasons set forth in subsection (a) of this section, it shall not be opened but shall instead be endorsed thereon as, "REJECTED", giving reason therefore.

(c) If the ballot envelope has been opened at the time an absentee judge decides that the offered ballot contained therein should not be accepted or voted for any of the reasons set forth in subsection (a) of this section, the ballot shall be returned to its ballot envelope and the absentee judge shall endorse on the ballot envelope, "REJECTED", giving reason therefore.

(d) Whenever it is made to appear by due proof to an absentee judge that any absentee voter, who has marked and forwarded the absentee voter's ballot, has died, the ballot envelope containing the ballot shall not be opened but shall be marked "REJECTED, DEAD", and shall be preserved and disposed of as other rejected ballots.

(e) Whenever a ballot has not been counted but has been rejected pursuant to this section, the appropriate notation shall be made on the absentee ballot tally and the number of ballots so rejected shall be noted on the certificates of election.

(f) Ballots rejected pursuant to this section shall be deposited in a carrier envelope for the Town of Elsmere election district to which they apply.

913.13. Validity of absentee voter's ballot for wrong Town of Elsmere election district.

If an absentee voter marks and returns an absentee ballot for a Town of Elsmere election district other than the one of which the absentee voter is a duly registered elector, such ballot, because thereof, shall not be adjudged invalid, but, as indicated by the marking of the ballot by the voter, shall be counted as a vote for every candidate appearing thereon who is a candidate for an office to be duly voted for in the Town of Elsmere election district.

913.14. Procedure if requests or ballots sent to wrong official; absentee ballots received by election officers.

If any request for an absentee ballot and accompanying envelopes, or any marked ballot of any such elector are addressed to and returned to any official other than the proper official of the Town of Elsmere, then the official shall immediately transfer such request or returned marked ballot to the proper officer of the Town of Elsmere where the elector is qualified to vote, to be acted upon by the Town of Elsmere as provided by Section 913 of this Chapter.

913.15. File of absentee voters.

(a) The Town of Elsmere shall maintain records providing for the prevention of fraud and to make possible the tracing and detection of any attempt to do so. Such records shall include, but shall not be limited to, the following entries:

- (1) The name of elector;
- (2) The address at which the elector establishes eligibility to vote;
- (3) The address where ballot is to be mailed;
- (4) The date the affidavit is received by the Town of Elsmere;
- (5) The elector's Town of Elsmere election district, if applicable;
- (6) The ballot envelope identification number;
- (7) The date the ballot is mailed, or delivered, to the elector; and
- (8) The date the ballot is returned.

(b) The Town of Elsmere shall compile from its files a list of names and addresses of all applicants for absentee ballots, and shall, upon request, send current and complete copies thereof without cost to candidates on the ballot in the forthcoming election. Such lists shall be provided no later than 2 weeks prior to the date of the election.

November 11, 2010

First and Second Reading

December 09, 2010

Third and Final Reading

Deborah A. Norkavage, Mayor

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

Synopsis

This Ordinance along with the revised Town Charter and Subchapters IV and V of Chapter 75 of Title 15 of the Delaware Code, governs the conduct of municipal elections conducted within in the Town of Elsmere.

Fiscal Impact

The fiscal impact of this ordinance is difficult to project at this time. The cost of many of the forms that will be needed, or fees that will be charged, are outside the control of the Town and have not been established as of the date of this ordinance. However, the cost is expected to exceed the \$3,000.00 that is normally budgeted in election years.